

DISPOSAL OF APPEALS, CROSS OBJECTIONS, MISCELLANEOUS APPLICATIONS, STAY APPLICATION AND REFERENCE APPLICATIONS AND DISPATCH OF ORDERS TO THE PARTIES

13.03

The Private Secretary or Personal Assistant of the Member who dictated the order and signed the same should ensure that the place and date of order are typed on the left hand side of the last page on the same line on which the Member has signed. He should carry out all corrections in the stencils if any made by the Member in the order before signing. He should type his name or initials in brackets at the bottom left hand corner of the order (or last page of the order). He should then pass on the file to the other Member/Members for signature through a messenger book.

The personal staff of the second Member and third member if any, will obtain the signatures of the respective Members. If there is no dissenting order, the file will be handed over to the Court Master of the concerned Bench after obtaining his acknowledgment. In the absence of the Court Master or the person acting as Court Master, the file should be handed over to the Assistant Registrar concerned. Where a dissenting order is recorded action will be taken as to set out in paras 13.11 to 13.14 depending on the nature of the case. The movement of the file will be mutatis mutandis as set out above.

13.04 Action by the Court Master :-

On receipt of the files with the orders, the Court Master should check up whether all the Members concerned have signed the orders and the name of place and the date are indicated at the end. The Court Master will ensure that no further action is required to be taken either by him or by the personal staff of the Members. He will among other things check that where there are majority and minority orders final order signed by the entire Bench in accordance with the decision of the majority has been recorded (If not the will re-submit the file to the Presiding Member vide Office Order No. 5/1966 dated 15.5.1986). (Appendix-35) He will then hand over the file, together with the folders if any, and the orders to the Assistant Registrar concerned and obtain his signature with date in token of receipt of the file

13.05 On receipt of unanimous orders :-

(a) Action by the Registry :- The Assistant Registrar will mark the files to the Head Clerk and wherever the orders are to be issued on priority basis he will indicate this on such files.

(b) Final Orders on appeals :- There may be cross objections in the appeals as well as in the reference applications In such cases suitable entries should be made in Register No. CEGAT-12 (Register of Cross Objections) and CEGAT No.14 (Register of Cross Reference Application). If the order of the Bench pertains to an appeal (including appeals/reference applications and rectification of mistake), he may mark the file to the Head Clerk. The Head Clerk will make suitable entries in the Register of Appeals (Register No. CEGAT-11) and in the disposal Register No CEGAT-18. Where the cases are remanded by the Bench suitable entry will be made by the Head Clerk in the Register No. CEGAT-30 before issue of the orders. Where the Bench orders the cases to be kept pending (e.g. because of concerned Court Cases) suitable entries will be made in Register No CEGAT-33 and these files will be kept separately.

He will assign a number in serial order and mark the number assigned on the order signed by all the Members. The order number will be followed by the year and the registry which issued the order e.g. Order No.1/86-C which means the final order No.1 of 1986 issued by the 'C' Bench. He will check up whether the order is reportable or not. If it is a reportable one he will make an entry in the Disposal Register in Red Ink in the "Remark" Column. Copies are to be sent to the Appellant/Respondent and Collector concerned etc., according to orders issued from time to time (vide para 13.09). He will submit the draft letter for issuing the final orders as in Appendix-36 to the Assistant Registrar.

13.06 Orders on Stay Applications :-

The Head Clerk will make necessary entries in the Register of Stay petitions CEGAT-17. He will assign a will number. For this purpose he earmark a few pages on the main Disposal Register itself i.e. CEGAT-18. The assigned number will be marked in the Order. Numbering will be done indicating the nature of order, year of issue and the Registry from which it is issued. E.g. STAY/1/86-'C' indicates that the Stay order was issued in the year 1986 by the 'C' Bench. He will use the rubber stamp meant for the purpose for endorsing copies and arrange for dispatch on the same day or next day positively after obtaining the signature of Assistant Registrar concerned.

13.07 Orders on Reference Applications :-

The Head Clerk on receipt of the orders along with the files will make necessary entries in Register No. 11, 12, 13 and 14. He will set apart few pages in the Disposal Register No.18 and assign a number as R.A./Order No.1/86-'C'. This will indicate order No.1 on Reference Application issued in 1986 from 'C' Bench. If the Bench concerned has drawn up a statement of cases for referring to the High Court/Supreme Court he will make necessary entries in Register Nos. CEGAT-20, 21 and 22 and arrange for issue of copies according to the procedure laid down above for "Stay Applications" and further follow the procedure laid down in paras 16.04, 16.05, 16.08 & 16.09 of Chapter 16.

13.08 Orders on Miscellaneous Applications :-

The Head Clerk will make necessary entries in the Register No. CEGAT-29. He will set apart a few pages in the Disposal Register (Register No.18) and assign a number as Misc./Order No.1/86-'C'. This means Order No.1 issued in 1986 on Miscellaneous Application pertaining to Special Bench 'C'. Similarly there will be a separate numbering of Miscellaneous Orders pertaining to the other Benches. The Head Clerk will arrange for issue of copies according to the procedure laid down above for Stay Applications.

13.09 The Head Clerk will prepare a draft covering letter in respect of final orders as per Appendix-36 and get it approved by the Assistant Registrar before getting it cyclostyled/photocopied. The Clerk concerned will type out the drafts and hand the file back to the Head Clerk in a day or two. The Head Clerk will then put up the fair typed letter for signature of Assistant Registrar and arrange for the requisite number of copies to be taken in the duplicating machine where cyclostyling is involved or through the photocopier as the case may be. Required number of photocopies for reportable decisions (according to the existing number of subscribing reporters) are 21 and the cyclostyled copies for non-reportable decision are 9 as laid down in Office Order 2/86, dated 24.2.86. He will use the Rubber Stamp prescribed for issuing Stay Orders/Miscellaneous Orders where necessary.

13.10 On receipt of the orders the Head Clerk will arrange to prepare the sets and mark the copies to the respective addressees. After obtaining the signature of the Assistant Registrar in each copy ready for issue he will insert the date and send the 'orders' to the

dispatch, keeping the files with him. On receipt back of the office copy, he will file the office copy in the main file and arrange for recording of the file.

13.11 Action by the Registry in cases where dissenting orders are recorded by a two-Member Regional Bench :-

Where the final orders are not unanimous, the point or the points of difference will be formulated by the Presiding Member and signed by both the Members of the Bench. The file will then be sent to the Registry by the Private Secretary concerned through the Court Master. The Court Master will hand over the orders and the files to the Assistant Registrar who will obtain the orders of the President for nominating a third Member. After obtaining the orders of the President suitable entry will be made in Register No CEGAT-31 and the case will be submitted to the third Member for fixing date, time and place convenient to him for hearing the case. Then a notice will be issued to the parties concerned as per Appendix-37.

Before issuing the notice, specific of the third member should be obtained whether the copies of the dissenting orders are to be sent to the Appellant/Respondent along with the notice. On receipt of any reply to the Notice a copy of the same should be handed over or sent by Registered post to the other party well before the date of hearing. After hearing of the case by the third Member and recording of his order the file will be returned back to the senior among the other two Members who expressed a difference of opinion. They will then record their final order in accordance with the opinion of the third Member on the points of difference (If considered necessary they may hear the parties again). The Personal Staff of the third Member will follow the same procedure as outlined earlier in the matter of typing, routing and handing over the files to the Court Master who will initiate further action as per the procedure laid down earlier.

On receipt of the final order along with the files, the Assistant Registrar will mark the file to the Head Clerk who will assign a number after registering in the appropriate Disposal Register. He will then prepare a draft covering letter and initiate further action for typing, obtaining the signature of the Assistant Registrar and issuing of the order as per procedure laid down above.

13.12 It is open to the President to nominate, instead of one third Member, more than one (necessarily an odd number such as three). The procedure to be followed in such a case will be the same mutatis mutandis, as when a single third Member is nominated.

13.13 Action by the Registry in cases where dissenting orders are recorded by a Special Bench of three Members (or any odd number of Members) :-

In such cases the final order will be in accordance with the decision of the majority of the Members of the Special Bench. A final order recording the decision of the majority and signed by all the Members of the Bench, also has to be recorded. (See Office Order No. 5/1986, dated 15.5.1986). Thereafter the procedure for issuing the order will be as in cases where there is no dissent.

13.14 Action by the Registry in cases where dissenting orders are recorded by a Special Bench of two Members (or any even number of Members) :-

In such cases the point or points on which the Members differ shall be decided by the President (vide the proviso to Section 129 (C) (5) Customs Act (also applicable to the Central Excises act). The procedure to be followed will be the same mutatis mutandis as in cases where dissenting orders are recorded by a two-Member Regional Bench

If the Bench passes an interim order directing the parties to submit documents, produce evidence etc., the Head Clerk will initiate further action by putting up a draft letter to the

13.15 Miscellaneous Action :-

concerned Parties for compliance of the orders of the Bench. On compliance by the parties, the Head Clerk will take further action to obtain the orders of the Bench wherever necessary or arrange to fix up case for further hearing after obtaining the written orders of the Assistant Registrar concerned.

RECORDING OF CASES DISPOSED OF

14.01

The Head Clerk of the Bench Registry will segregate all the files on which final orders have been issued and action has been completed by the Registry. After an appeal has been decided and orders communicated the records should be retained in the Bench Registry for 4 months. This will allow time for an application for restoration in the case of appeals dismissed for default or an appeal to the Supreme Court in other Special Bench cases, or a reference application in Regional Bench cases, or an application for rectification of mistakes in any case. If within the 4 months period any appeal or application as above is received, further action as appropriate will be taken

14.02 In cases where the 4 months period is over without any appeal or application as referred to above having been filed, the Head Clerk will prepare a list of such cases in the prescribed performa (Appendix-38), for sending them to the record room. The Head Clerk will ensure that all the relevant particulars are marked on the file cover After obtaining the approval of the Assistant Registrar he shall arrange to hand over those files to the Record Clerk in the record room along with a list. He shall obtain the signature of the record clerk in token of having received the files listed and keep it in his custody. The record clerk will sort out all the decided appeal files act-wise, year-wise and appeal-number wise, i.e. all the decided case files will be sorted out appeal-number wise of all the years separately in respect of the Customs Act Central Excises Act and Gold (Control) Act respectively.

14.03 Thereafter all the flags should be removed from the files and complete paging should be verified/carried out

14.04 Then all the relevant particulars namely (a) S.No, (b) No.of case, (c) Name of Appellant, (d) Name of Respondent, (e) Order No. & Date, (f) Decided by Special Regional Bench, (g) Nature of Order (h) Date of consignment of file to the record room and (I) Remarks etc., should be recorded in the prescribed Register year-wise and serial-wise in different Registers one each for the Customs Act Central Excises Act and Gold (Control) Act

14.05 Then all the decided files should be tied up in neat and tidy bundles of "Marking Cloth" in respect of each year separately. In case all the files pertaining to one year cannot be tied up in one bundle, then the files should be divided in as many bundles as necessary so that each bundle can be tied up neatly.

14.06 Thereafter upon one side of the cloth bundle, the Title of the Bench, Act, Year and Serial Nos., of the files contained in the bundle should be written in bold thick red ink so that they can be read from a distance, and then such bundles should be kept in suitable steel racks.

14.07 After the consignment of files to the record room, a file may be brought out of the record room, as and when required but only after filling up a form (as per specimen at Appendix-39). This form may be kept in the same bundle where from the file is extracted in the place of files. As and when the file is restored to the Record Room this form will be kept with the file. At the time of the next extraction of the same file the next entry may be made in the next line of the same form, so that an accurate account of the extraction of any file is maintained.

DESTRUCTION OF RECORDS

Final destruction of records relating to decided cases can be carried out only if there is no further appeal or connected proceeding pending and or a sufficient period has elapsed so that it can be presumed that no further proceeding is likely. Such destruction will be carried out in accordance with orders to be issued from time to time.

14.09 However in order to reduce the bulk of old records the duplicate and triplicate copies of the appeal files will be destroyed if the prescribed period has passed without any further proceeding having been initiated. This period will be 6 months after the issue of the final order in Regional Bench matters*, Cases in the record room will be scrutinized from time to time under instructions of the Registrar in accordance with the above Guidelines. The duplicate and triplicate copies which are weeded out in this process will be destroyed under the instructions of Registrar.

* And one year after the issue of the final order in Special Bench matters.

14.10 If it happens that after the duplicate and triplicate copies have been destroyed under the above procedure some proceeding is instituted and the records become necessary for further action copies of documents on the first file may, if necessary, be made out by the photocopying process.

14.11 In respect of outlying Regional Benches, the recording and up-keeping of the closed files in accordance with the orders issued from time to time will be the responsibility of the Head Clerk concerned, under the supervision of the Assistant Registrar.